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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 13. NOVEMBER, 1906. No. 6.

CASE AND COMMENT

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Unfair Competition.

Within recent years a new class of cases seeking a remedy against what is called "unfair competition" has become somewhat well known in the courts. Unfortunately the term used to describe these cases quite fails to define their nature. There are many kinds of unfair competition in business which are not at all touched by the doctrine which the courts have developed in this line of cases. The practice of a powerful competitor to sell goods below cost for a limited time or in a limited field in order to break down a weaker competitor is certainly unfair competition, but it is not at all touched by the doctrine which has grown up under that name. The same is true, also, of a great variety of forms of oppressive and ruinous competition, against which the law has, up to the present time, furnished no adequate remedy. For clearness of understanding with respect to this modern doctrine to which many lawyers have yet given little or no attention, it may be worth while to consider what is the really distinctive and fundamental element in what the courts have called "unfair competition." An examination of the cases on the subject makes it reasonably certain that this doctrine, as thus far developed at least, relates only to competition which consists of deceiving the public by palming off imitations in lieu of the genuine articles which the purchasers suppose themselves to be buying. It is, in substance, the stealing of another's trade by deception. It may consist of imitating another's trademark, trade name, the labels, marks, or stamps upon his goods, the form, style, or appearance of his packages, or any other element or incident which may deceive purchasers and induce them to buy the goods of one proprietor supposing them to be those of another. "The elementary principle that no person has the right to sell his goods for those of another" is laid down in W. R. Lynn Shoe Co. v. Auburn-Lynn Shoe Co. 100 Me. 461, 4 L.R.A. (N.S.) —, 62 Atl. 499, as the basis on which rests the general law of unfair competition in trade. This succinctly and accurately states the substance of the doctrine.

The extent to which this doctrine goes is suggested by the somewhat novel case of Weinstock, L. & Co. v. Marks, 109 Cal. 529, 30 L.R.A. 182, 50 Am. St. Rep. 57, 42 Pac. 142, where, in addition to protecting the words "mechanics' store" as a trade name against its use by a rival dealer on the same street, the court granted a mandatory injunction to compel a dealer who had so closely copied the appearance of a rival store close by on the same street to adopt some method of distinguishing his place of

business so as not to deceive customers. This was obviously identical in principle with the cases in which the distinguishing marks upon goods were copied. In both instances the imitation was wrongful because its effect was to deceive the public and steal another's trade by such deception. Wherever any imitation or false representations will deceive the public into buying one person's goods believing them to be those of another, the principle would seem to be applicable.

One of the unsettled questions respecting this class of cases is that of the necessity of an actual intent to defraud in order to make the imitation or misrepresentation actionable. That innocent intent will relieve one from liability for damages in selling goods which are mistaken for those of another seems to be conceded. But the cases are in conflict as to whether innocence of intent will relieve him from an injunction against further continuance in the use of such deceptive imitation or misrepresentation. Cases on this subject are analyzed in a case note to the Lynn Shoe Case, above cited in 4 L.R.A.(N.S.)—; but the practical result of the divergent statements of the court on this point is not often serious. Cases which hold that, as the essence of action is fraud, and actual fraudulent intent is necessary, are substantially agreed that this fraudulent intent may be fairly inferred from such imitation or misrepresentation as will in reality deceive the public. Moreover, so far as the remedy by injunction is concerned, after a demand to discontinue the imitation or misrepresentation is made, its continuance can hardly be deemed innocent if the effect is to deceive the public; and therefore as to the future an injunction can probably be granted, though in what had previously been done the defendant may have been innocent. But, as a matter of principle, it seems reasonable to hold that, if a person imitates the goods of another, or any of their distinguishing marks or characteristics, with the result of deceiving the public and thereby injuring his competitor, an injunction should lie to prevent this wrong without regard to any intent or motive of the defendant. Equity should protect the competitor and the public against such deception without regard to the moral fault of the person who caused it. At any rate his innocence in beginning the deception can be no good reason for allowing him to continue it after he knows that what he is doing is deceiving the public and injuring a competitor thereby. On the other hand, for what he has done innocently there seems to be no legal liability for damages.

Federal Power to Enforce Our Treaty Obligations.

A man who breaks his word is, in the business world, a pariah, and the nation which disregards a treaty obligation makes an indelible blot upon its history. Most governments are chargeable with bad faith if their subordinate officials or subjects repudiate the obligations of their treaties, because most governments are free from any constitutional restrictions which limit their power to compel their own people to observe a treaty obligation. But in this country we have a somewhat peculiar situation growing out of the complex relations of the Federal and state governments.

It is to the shame of the United States that we have more than once refused to recognize the sacred obligations of our treaties. It is well settled by the decisions of the Supreme Court that an act of Congress may supersede a prior treaty, and that in such case the courts must disregard the treaty and enforce the statute, leaving it to the political department of the government to adjust the difficulty that may arise in consequence. It is true that such repudiations, of our treaty obligations by act of Congress have, for the most part at least, been in violation of our treaties with the Indians or the Chinese, who, it could safely be presumed, would be powerless to punish us for our bad faith. An instance of this is the Chinese Exclusion Case, 130 U. S. 581, 32 L. ed. 1068, 9 Sup. Ct. Rep. 623, where the exclusion act was upheld though it was in violation of treaties. In this matter of the breaking of a treaty by act of Congress no constitutional restrictions on the part of the government can relieve us from bad faith because the law-making power is itself the government; but, when treaty obligations are ignored, or only repudiated, by the officials or people of some state, the question arises as to what are

the powers of the Federal government to enforce the treaty. The recent episode of the exclusion of Japanese children from schools in San Francisco has created a question of international importance. The good faith of the United States as represented by the Federal government might be unimpeachable though the government might be powerless to compel the observance of treaty obligations; but this could only be if the government had ineffectually exercised all the power that it had for that purpose. The first question is, Does such exclusion violate our treaty with Japan? If so, the next question is, Can the Federal government prevent it? The opinion of Secretary Root is quoted by the press, to the effect that, under art. 6, § 2, of the Federal Constitution, which makes treaties a part of the supreme law of the land and binding on the judges in every state, "anything in the Constitution or laws of any state to the contrary notwithstanding," the Federal government has ample power to compel the officials of the state to refrain from any such discrimination against the Japanese as would violate the treaty. Unless this is so, our nation must stand in a ridiculous light before the world. In the nature of things, that constitutional provision which makes the treaty superior to the Constitution or laws of a state, and binding on its judges, must give to the Federal government the right to exercise a remedy in some form to enforce the treaty. An injunction is the remedy sought in this case. The power of the Federal government to proceed by injunction to protect the transportation of the mails and prevent the obstruction of interstate commerce was established by the United States Supreme Court in Re Debs, 158 U. S. 564, 39 L. ed. 1092, 15 Sup. Ct. Rep. 900. And this is sufficient to suggest that such civil remedies as injunction, prohibition, quo warranto, and mandamus may be invoked by the Federal government in appropriate cases whenever treaty obligations are denied, though the citizens or officials of a state may be the parties to be controlled. The power that made the treaty must in some manner secure its observance. If the Japanese treaty is not violated by the exclusion of Japanese children from the schools, it does not appear that the government of the United States has any power in the matter. But, if the treaty is violated, it is another matter. Our government must be stultified in the sight of all nations if it cannot compel its own people to respect its own treaties. If any municipality or state could with impunity repudiate the obligations of a treaty of the United States, the situation would be intolerable. Such a government would be beneath contempt.

Government by Private Citizens.

The reports that San Francisco is aroused over a carnival of lawlessness existing there sharply recall the accounts of vigilance committees organized in earlier days to overthrow the rule of desperadoes who terrified frontier communities. The vigilance committees of those days proceeded irregularly, without sanction of law, and by violence, to establish a government of regularity, of order, and of law. In these days it is not likely that any vigilance committee is anywhere needed in this country to act by violence and outside of the law. But vigilance committees of another kind are undeniably necessary, and have a work of supreme importance to do.

To recapture the control of its own government has been the heroic duty of more than one great city in recent years. There may be humor or satire in saying that "the Dutch have taken Holland," but it has been no humorous or trifling matter for the people of some of our great cities to recapture possession of their own town. To dislodge the entrenched forces of corruption from their control of the government of the city has required as much courage and heroism as if the revolution were to be wrought by battles, and not by ballots. In New York, in Philadelphia, in Cincinnati, in Chicago, in St. Louis, in Minneapolis, and in other cities the struggle for the re-establishment of honest government for the people, as well as in form by the people, has been more important to civilization than many a bloody war of history. It is not necessary to exaggerate the evils that have existed; the ordinary citizen knows well enough what the facts have been. A new era has begun, but the fight is not over. It is not necessary to suppose that the picture in Winston Churchill's Coniston of the corruption of the state legislature gives a just impression

of the conditions. Honest men, some of whom are to be found in every legislature, do not stand in the foreground of that picture. The character of many of our legislatures has been much less tainted than that of this legislature of fiction; yet not even the imagination of the novelist has portrayed corruption so rank, so bold, and so nearly universal as that which the sober facts of history record for some actual sessions of some of our state legislatures. A frank statement from any legislator who has seen much service will show that the forces of corruption have been by no means absent from the capitol of any state. The fight up to this time for the recapture of our own government has been chiefly made where it was most needed in our cities. There is plenty to do of the same kind in at least some of our state governments. But the history of the past few years gives room for almost unlimited confidence in the strength of the people to accomplish this result. Many noble men in public life have already led, and are still leading, the movement. To speak of it as a fight by the private people against their officials would be the rankest misrepresentation. It is a fight of the private people with the aid of honest officials against those of another class.

The need of an organization of private citizens to protect the rights of the people is nevertheless demonstrated by experience. Corruption in some cities has been a public scandal known far and wide for many years before any real revolt against it. Probably the civic revolution by which rings of grafters have been lately dethroned in some of these cities could have been accomplished nearly a generation earlier if the best citizens had organized for the purpose. But what everybody knows well enough about public graft no one is usually able to prove until by organized and systematic effort the secret facts are laid bare to the public. An organization of able and courageous citizens with plenty of funds to pay the expenses of their work, unhampered by any fear that their own political friends may be hurt thereby, can in any state do more in one year to free it from the scandals of bribery and corruption of officers, whether state or municipal, than has been done in a generation. It can also compel the faithful prosecution of political criminals who too often escape punishment by the tenderness of those officials who are associated with them in politics. Patient, persistent, extensive, and secret investigations are often needed before any effective prosecution can be begun, even against grafters whose guilt is almost a matter of common knowledge. Prosecuting officers will not, often cannot, effectively do this investigating. It is at this point that the greatest work of these bodies of public-spirited citizens can be done.

Government by private citizens as the power behind the throne is in various forms constantly exercised. The political boss holding no state office, who dictates the legislation of the state, is the supreme illustration of this. Yet, while every citizen knows it, the disgrace of that situation hardly penetrates his calloused conscience because he has become accustomed to it. Some organization of good citizens is in almost every instance the real force that compels the enactment of any law of reform. A legislature rarely attacks any public evil of magnitude until it is compelled to do so by the pressure of public opinion brought to bear upon it by some body of public-spirited citizens. The press is a great power when aroused to attack the public evil; but it is a rare newspaper of the partisan sort that can be brought to attack any evil for which the officials of its own party are responsible, and non-partisan newspapers too often refuse to attack a local evil if their action might offend some of their subscribers or advertisers. But timid and subservient newspapers suddenly change front when they are confronted by a powerful body of citizens. Such an organization composing what may be called a vigilance committee, with no ends to serve except the public welfare, is the reserve power of government by the people when their nominal representatives misrepresent them. This is a great and yet almost unused force; but the organization in Delaware to protect the purity of the ballot, a similar organization of very eminent citizens in New York state, and the organization of citizens in San Francisco to purge the city of its powerful grafters and criminals, are all illustrations, or at least suggestions, of what the best citizens of a state can accomplish if they are willing to free themselves from partisanship and unite to give their combined influence and power to secure good government in the interest

of the people. To do their needed work, such organizations must include men of high character, with no aims but the public good, in numbers sufficient to make them respected and feared, and with funds enough at their command to pay all the expenses of the most thorough and tireless efforts to detect and punish the men who corrupt any of the factors of our public life. Most of all, such a body of citizens must be unpartisan and ready to follow the trail of crime wherever it leads, without regard to the social or political standing of the criminal.

Election Comment.

In the immense mass of comment on the late elections, two conspicuous lessons seem to be clearly perceived by many observers. In their autopsy on the late campaign many people see symptoms which their pre-election diagnosis did not reveal to them. The first and greatest cause of the obvious unrest and disturbance of the public mind, which, indeed, was foreseen by the wisest observers, and is now seen for the first time by many, is a conviction, which has become general throughout the country, that great corporations and commercial interests, however great their value to the country in many directions, have become a menace, not only because of oppression and extortion by their monopolies, but even more because of their disregard, and even their defiance, of law, and their corruption of officials. Except for the fact that the national government has been doing in this country in the past few years the greatest work ever done in this country to unearth crimes of high officials, without regard to their partisanship, and to bring to justice the arrogant corporations that had defied the law, and that in various states and cities honest, thorough, and effective work has been done to overthrow the criminals, it cannot be doubted that the elections would have shown even more significant results of the people's unrest and dissatisfaction.

Another reason for the breaking down of party lines that is now evident, even to many unwilling observers, is in the growing rebellion of the people against political bosses, whether they are called Republicans or Democrats. It is significant that a leading Republican journal, always faithful to the dominant machine of its party, and to whom the word of the boss has been as the voice of Allah, pointed out in its post-election reflections that the Republican vote in the state was chiefly in the cities and great manufacturing centers, where "machine and boss manipulation and power are most in evidence." This sounds almost like treason in the boss's body-guard.

Will it blow over? is the question in the minds of many politicians. They may as well recognize that in the days to come the people are going to have something to say about their own government, and that they will not abdicate in favor of bosses and machines. They will not tolerate an oligarchy of professional and self-serving politicians. Nor will they permit the existence of a class of privileged lawbreakers too powerful for the law to control.

Index to New Notes

IN

LAWYERS' REPORTS ANNOTATED

4 L.R.A.(N.S.) pages 1—592.

Among the New Decisions.

Action. The right of an agent, who by mistake pays to a third party money in his possession belonging to his principal, to maintain in his own name an action for money had and received to recover it back, is sustained in Parks v. Fogleman (Minn.) 4 L.R.A.(N.S.) 363.

Stating of a woman that "she is a dirty, vile woman" is held, in Feast v. Auer (Ky.) 4 L.R.A.(N.S.) 560, not to impugn her virtue, and not to be actionable.

Arrest. See MASTER AND SERVANT.

Arson. An attempt to commit arson is held, in State v. Taylor (Or.) 4 L.R.A.(N.S.) 417, to be made by employing and paying persons to do the act, furnishing them materials and a horse, showing them how to start the fire, and starting them on their way, although the persons employed do not in fact intend to carry out their agreement, and one is acting with the knowledge of the owner of the building for the purpose of entrapping the others.

Attorneys. The power of an attorney, under his general authority, to discontinue an action by a dismissal without prejudice, is sustained in Bacon v. Mitchell (N. D.) 4 L.R.A.(N.S.) 244, and his client is held to be bound thereby.

Banks. A bank director is held, in Hicks v. Steel (Mich.) 4 L.R.A.(N.S.) 279, not to be liable for breach of his duty as such in inducing the bank to extend credit to an individual beyond the statutory limit, and in making false representations as to paper presented for discount, where he was not at the time acting as director, but as agent for the borrower.

Benevolent societies. The authority of officers of subordinate lodges of benevolent societies, by reason merely of such office, to waive any of the provisions of the rules and regulations of the order which enter into

and form a part of the contract of membership, is denied in Royal Highlanders v. Scovill (Neb.) 4 L.R.A.(N.S.) 421.

Bills and notes. A person who receives a check drawn on a bank in another place is held, in Lewis, H. & Co. v. Montgomery Supply Co. (W. Va.) 4 L.R.A.(N.S.) 132, not to be required to transmit such check by the only or last mail of the day next after its receipt, if such mail closes or departs at an hour so early as to render it inconvenient for the holder to avail himself of it.

A note indorsed by an accommodation indorser, before delivery, for the interest due on outlawed notes, upon which he was jointly and severally liable, is held, in Medomak Nat. Bank v. Wyman (Me.) 4 L.R.A.(N.S.) 562, to remove as to him the bar from the earlier notes.

Building and loan associations. The power of the board of managers of a building and loan association to transfer to another association the contract of a borrowing stockholder is denied in Cobe v. Lovan (Mo.) 4 L.R.A.(N.S.) 439.

In case of an advance by one loan association to take up a loan in another upon stock which has partly matured, it is held, in Butson v. Home Sav. & Trust Co. (Iowa) 4 L.R.A.(N.S.) 98, that the net amount of the loan is the sum still due, and not the face value of the loan, although the latter amount is charged on the books of the association, and a credit as of an advance payment thereon given for the withdrawal value of the stock in the other association.

Carriers. The right of a sleeping car company to refuse to admit to its car a person having a contagious disease, although he has purchased a ticket for passage thereon, is sustained in Pullman Co. v. Krauss (Ala.) 4 L.R.A.(N.S.) 103.

A street railway company is held, in Omaha Street R. Co. v. Boesen (Neb.) 4 L.R.A.(N.S.) 122, not to be an insurer of its passengers, nor to be bound to do everything that can be done to insure their safety; but to fulfil its obligations in that regard when it exercises the utmost skill, diligence, and foresight consistent with the practical conduct of the business in which it is engaged.

Where a passenger was injured by the starting of the train while he was alighting therefrom, the fact that the train stopped the usual and ordinary time at the station is held, in Chicago, R. I. & P. R. Co. v. Wimmer (Kan.) 4 L.R.A.(N.S.) 140, not to be conclusive that a sufficient length of time was given the passenger to alight; and whether the stop was reasonably sufficient under the circumstances is held to be a question for the jury.

From the time a passenger places himself under the charge of the carrier as he begins his journey until he is afforded the opportunity to leave the premises of the carrier at its termination, he is held, in Fremont, E. & M. V. R. Co. v. Hagblad (Neb.) 4 L.R.A.(N.S.) 254, to be a "passenger being transported," within the meaning of a statute relating to injuries to persons while being transported on railroads, unless by some act not attributable to the carrier the relation ceases.

A street car company which has so overcrowded a car that passengers are compelled to stand upon the steps and platform is held, in Alton Light & T. Co. v. Oller (Ill.) 4 L.R.A.(N.S.) 399, to be bound to regulate the speed of the car so as not to endanger persons so situated.

Starting a street car before an incoming passenger has reached his seat is held, in Bennett v. Louisville R. Co. (Ky.) 4 L.R.A. (N.S.) 558, not to be negligence, where there is nothing in his appearance to indicate that he needs unusual care and precaution for his protection.

A carrier who fails to perform promptly his contract to transport the scenery and properties of a traveling show, knowing that their absence will prevent a performance, is held, in Weston v. Boston & M. R. Co. (Mass.) 4 L.R.A.(N.S.) 569, to be liable for the value of the ordinary earnings of the properties during the time the owner is deprived of their use, less the expense which he is saved by inability to exhibit; and the fact that such damages are not provided for in the shipping articles is held to be immaterial.

Cigarettes. See CONSTITUTIONAL LAW.

Commerce. See CONSTITUTIONAL LAW.

Concealed weapons. Conviction of the offense of carrying concealed weapons is held, in McConathy v. Deck (Colo.) 4 L.R.A. (N.S.) 358, not to be necessary to work a forfeiture of them under a statute prescribing a punishment for such offense, and providing that all concealed weapons taken

from persons violating the statute shall be forfeited to the county.

Constitutional law. The constitutionality of a statute prohibiting the sale of railroad tickets through brokers is sustained in State v. Thompson (Or.) 4 L.R.A.(N.S.) 480.

Power of the state to deny a proper person the right to hold in the original packages cigarettes which he has imported from another state is denied in State v. Lowry (Ind.) 4 L.R.A.(N.S.) 528.

Contracts. A telegram to a bidder for public work, "You are low bidder. Come on morning train,"—is held, in Cedar Rapids Lumber Co. v. Fisher (Iowa) 4 L.R.A. (N.S.) 177, not to conclude a contract with him.

See also HUSBAND AND WIFE.

A contract between an attorney and client for services to be rendered by the former is held, in Stroemer v. Van Orsdel (Neb.) 4 L.R.A.(N.S.) 212, not to be necessarily invalid because a part of the services to be rendered is the procurement of legislative action, nor because such contract provides for a contingent fee.

The mere denial of a contract by one against whom it is sought to be enforced is held, in Sprague v. Jessup (Or.) 4 L.R.A. (N.S.) 410, not to prevent its specific enforcement if the court is satisfied of the truth of the allegations of the complaint.

A parol contract by which two persons enter into a partnership to purchase real estate, one to furnish the money and take the title, and convey a half interest to the other upon receiving his share of the purchase price, is held, in Scheuer v. Cochem (Wis.) 4 L.R.A.(N.S.) 427, to be void under the statute of frauds.

The validity of a contract by a municipal corporation to locate public buildings at a certain place, in consideration of a donation toward the expense, is denied in Edwards v. Goldsboro (N. C.) 4 L.R.A.(N.S.) 589.

Where a written contract, entered into between a purchaser of certain goods and a person who signed for the seller, contained a provision that the contract "shall only be considered binding on the seller when signed by one or more of its officers;" and it does not appear that it was ever so signed, or that there was any consideration for the promise of the purchaser except the contemplated mutual obligations to be assumed by the seller, it is held, in Atlanta Buggy Co. v. Hess Spring & Axle Co. (Ga.) 4 L.R.A.(N.S.) 431, that the contract was not binding on either party, and the purchaser might withdraw from it before it became mutually binding by acceptance in the manner agreed upon; and subsequent ratification of the contract by the seller is held not to change its written terms so as to make the contract binding on the purchaser before it has been signed by one or more of the officers of the seller.

Counties. The power of a county, in the absence of express legislative grant, to enter into a contract for the employment of a tax ferret, is denied in Stevens v. Henry County (Ill.) 4 L.R.A.(N.S.) 339, even though the duty of discovering untaxed property has not been placed upon the public officials.

Covenants. Knowledge by a purchaser of real property of an unexpired lease of the property is held in Browne v. Taylor (Tenn.) 4 L.R.A.(N.S.) 309, not to prevent his maintaining an action for breach of covenant because of such lease.

A covenant in a lease, whereby the lessor expressly stipulates that he will not be bound to make repairs, alterations, additions, or improvements upon the leased premises, but agrees that the lessee, at his option, may make such as shall be necessary, and that he will reimburse him therefor to an amount named, is held, in Willcox v. Kehoe (Ga.) 4 L.R.A.(N.S.) 466, to be a personal obligation on the part of the original lessor, and not to run with the reversion, so as to bind an assignee thereof.

Criminal law. Acquittal of a sales agent upon a charge of embezzlement and larceny in retaining funds collected from customers is held, in Spears v. People (Ill.) 4 L.R.A. (N.S.) 402, not to be a bar to a subsequent prosecution for forgery in making false notes of the customers, although the two indictments relate to the same transaction.

To warrant the application of a statute authorizing additional punishment of one convicted of crime upon proof of former convictions, it is held, in State v. Smith (Iowa) 4 L.R.A.(N.S.) 539, that the identity of the accused and the one against whom the former judgments were entered must be established by affirmative evidence; mere proof of identity of names not being sufficient.

Deeds. A deed to real estate, containing

the following provision: "Reserving to said parties of the first part all the rights, privileges, and benefits secured under an oil and gas lease executed by said parties of the first part, with full power and right to renew or extend, change or modify, said lease as fully and to the same extent as though this conveyance had not been executed. It is intended hereby to reserve all oil and gas privileges in and to said premises,"—is held, in Moore v. Griffin (Kan.) 4 L.R.A. (N.S.) 477, to constitute an exception, and not a reservation; and the title to the oil and gas in the lands is held to remain in the grantors.

Descent and distribution. The distributive share of the real estate of an heir debtor to the estate of his ancestor is held, in Marvin v. Bowlby (Mich.) 4 L.R.A.(N.S.) 189, not to be chargeable with such indebtedness, either as land or as the proceeds thereof in the hands of the administrator.

Electric railroads. See HIGHWAYS.

Eminent domain. The right of the legislature to confer the right of eminent domain upon a tunnel company organized to project a tunnel to drain, ventilate, and aid in securing the mineral from mines along its course is sustained in Tanner v. Treasury Tunnel, M. & R. Co. (Colo.) 4 L.R.A. (N.S.) 106.

That a statute providing for condemnation of a right of way for an irrigation ditch must provide for notice to the person whose land is to be taken, of the hearing for fixing the damages, is declared in Sterritt v. Young (Wyo.) 4 L.R.A.(N.S.) 169; and it is held not sufficient that notice is provided of the time for appointment of the appraisers.

Evidence. A communication to a peace officer to aid in detection of crime is held, in Miller v. Nuckolls (Ark.) 4 L.R.A.(N.S.) 149, to be privileged only when made in good faith, not when made recklessly, with the intention to gratify personal malice toward the person affected by the charge, or his family.

One killed at a railroad crossing, and seen to have used due care in looking for trains as he approached the crossing, until he passed beyond the sight of witnesses, is held, in Hanna v. Philadelphia & R. R. Co. (Pa.) 4 L.R.A.(N.S.) 344, to be presumed to have done his duty, and not to have been guilty of contributory negligence at the point of crossing.

The presumption that one who was killed while crossing a railroad track looked and listened before attempting to cross it is held, in Carlson v. Chicago & N. W. R. Co. (Minn.) 4 L.R.A.(N.S.) 349, to be destroyed where the plaintiff introduces direct and affirmative evidence as to exactly what occurred, and where it also appears from the undisputed evidence that, if the deceased had looked and listened before going upon the crossing, he must have seen and heard the train approaching.

The presumption that a person approaching a railroad crossing exercised due care and caution is held, in Wabash R. Co. v. De Tar (C. C. A. 8th C.) 4 L.R.A.(N.S.) 352, to be disputable, and not to exist where the surrounding circumstances are shown to have been such that, had the injured person taken reasonable precautions for his safety, the injury would not have occurred.

False imprisonment. A plaintiff who abandons a suit in which defendant has been arrested on mesne process, before it is entered in court, is held, in Gibson v. Holmes (Vt.) 4 L.R.A.(N.S.) 451, not to be able to justify under the writ in an action by defendant for false imprisonment.

Firearms. See NEGLIGENCE.

Highways. An interurban electric street railroad, when attempting to acquire the rights of abutting owners in the highway, is held, in Abbott v. Milwaukee Light, H. & T. Co. (Wis.) 4 L.R.A.(N.S.) 202, to be upon the same plane with commercial railroads generally.

The location, without authority, of a voting both in a public highway, is held, in Haberlil v. Boston (Mass.) 4 L.R.A. (N. S.) 571, to constitute a defect therein which will require the municipal corporation to exercise reasonable diligence to protect the public travel.

Homestead. A mother, and an adult son who is incapable of caring for himself and receives support from her, are held, in Sheehy v. Scott (Iowa) 4 L.R.A.(N.S.) 365, to constitute a family capable of claiming a homestead.

That heirs do not take the homestead of their ancestor free from his debts contracted prior to its acquisition, under a statute providing that the homestead of every pensioner, whether the head of a family or not, purchased with pension money, shall be exempt, and such exemption shall apply to debts contracted prior to its purchase, is

declared in Beatty v. Wardell (Iowa) 4 L.R.A.(N.S.) 544, where, under the statute, such exemption would not apply to homesteads in general.

Homicide. Mere words, however abusive and insulting, are held, in State v. Buffington (Kan.) 4 L.R.A.(N.S.) 154, not to justify an assault, nor to constitute a sufficient provocation to reduce to manslaughter what would otherwise be murder.

The mere attempt to flee from the scene of a homicide before the fatal shot was fired is held, in State v. Forsha (Mo.) 4 L.R.A.(N.S.) 576, not to absolve from responsibility one who aided, abetted, and encouraged its commission to the extent of commanding the one who committed it to shoot deceased.

Husband and wife. Refusal by an English woman to accompany her husband upon his emigration to this country to better his condition in life, without other excuse than disinclination to leave her native land, is held, in Franklin v. Franklin (Mass.) 4 L.R.A.(N.S.) 145, to be desertion which will entitle him to a divorce.

In Kansas coverture is held, in Harrington v. Lowe (Kan.) 4 L.R.A.(N.S.) 547, to afford no ground for declaring invalid a married woman's contract, even although she possesses no separate estate or separate trade or business.

Insurance. A condition in a policy of fire insurance, providing that, if the interest of the insured be other than unconditional and sole ownership, or if the subject of the insurance be a building on ground not owned by the insured in fee simple, the policy shall be void, is held, in Re Millers' & Mfrs. Ins. Co. (Minn.) 4 L.R.A.(N.S.) 231, to apply to the existing conditions at the time the insurance is taken, and not to future changes in title, although the company made no inquiries as to title, and the insured made no representations in regard to it.

A beneficial association issuing death benefit certificates is held, in Lyon v. United Moderns (Cal.) 4 L.R.A.(N.S.) 247, not to be within the meaning of a question in an insurance application as to whether or not applicant has ever been rejected by any company.

Failure of arbitration through no fault of the insurance company is held, in Grady v. Home F. & M. Ins. Co. (R. I.) 4 L.R.A. (N.S.) 288, not to abrogate a provision in the policy that no action shall be brought until the amount of the loss has been settled by arbitrators, and there is nothing to show that arbitration has become impossible.

The right to subject the surrender value of a debtor's life insurance policies, which were, prior to the contracting of the indebtedness, and not in contemplation thereof, made payable, in case of the debtor's death, to his wife and children, is denied in National Bank of Commerce v. Appel Clothing Co. (Colo.) 4 L.R.A.(N.S.) 456, although he had power to change the beneficiaries, and, in case he lived out the term of the policies, the amounts due on them were payable to him.

Judgment. Refusal of a trial court to open a default and permit the filing of an answer is held, in Douglas v. Badger State Mine (Wash.) 4 L.R.A.(N.S.) 196, to be an abuse of discretion, where defendant's attorneys, living a long distance from the place of trial, presented a motion to make the complaint more definite, accompanied by an argument, and relied upon plaintiff's counsel to notify them of the result of the motion, which was not done, so that the default was incurred, immediately after which an affidavit of meritorious defense and excusable neglect and an answer were tendered.

That the lien of a judgment will reach the interest in the coal remaining in place, of a landowner who has leased at a certain yearly rental the right to mine a specified amount of coal from the land each year, the contract to terminate when the coal shall all have been removed or the conditions of the lease are broken, excess payments in any year to entitle the lessee to take out a corresponding additional amount of coal at any time within six years, is declared, in Coolbaugh v. Lehigh & W. Coal Co. (Pa.) 4 L.R.A.(N.S.) 207; and the sale thereunder is held to carry the incidental right to the rent or royalty under the lease.

A claim of one as heir at law to real estate is held, in Remilliard v. Authier (S. D.) 4 L.R.A.(N.S.) 295, to be cut off by a judgment against him in an action to quiet title, in which the title is put in issue, and he might have presented such claim, but did not.

Landlord and tenant. The duty of the owner of an office building to keep in proper

condition the portions of the building retained in his possession is held, in Whitcomb v. Mason use of Levinson (Md.) 4 L.R.A.(N.S.) 565, not to extend to keeping outer doors unlocked on Sunday to enable tenants to remove large pieces of furniture in case of fire.

Limitation of actions. See BILLS AND NOTES.

Logs. Merely permitting logs to remain upon rollways is held, in Log Owners' Booming Co. v. Hubbell (Mich.) 4 L.R.A. (N.S.) 573, not to forfeit title to them under a statute providing for forfeiture of logs allowed to float on land adjoining a stream.

Master and servant. The owner of a vessel is held, in The Kenilworth (C. C. A. 3d C.) 4 L.R.A.(N.S.) 49, not to be liable for the result of improper treatment of a sailor's fractured leg, if the master concluded, in the exercise of his best judgment, that no fracture existed, which conclusion, under the circumstances, was not unreasonable, and the treatment afforded would have been neither negligent nor improper had the conclusion been correct.

That a master does not fulfil his duty to his servants with respect to repairing a broken chain which is part of the permanent equipment for handling bars of iron, by furnishing a competent smith with sufficient materials, is declared in Haskell v. Cape Ann Anchor Works (Mass.) 4 L.R.A.(N.S.) 220.

The employment of a detective to ascertain and report the facts as to who was concerned in a robbery is held, in Milton v. Missouri P. R. Co. (Mo.) 4 L.R.A.(N.S.) 282, not to render the employer liable for an arrest made by him for the purpose of ascertaining whether or not the person arrested was concerned in the robbery.

A telegram directing a conductor to take on a car with a broken drawbar next to his cabin car is held, in Shuster v. Philadelphia, B. & W. R. Co. (Del.) 4 L.R.A.(N.S.) 407, to mean next behind, at the end of the train; and the superintendent sending it is held not chargeable with negligence in case the conductor places the car in front of the cabin car, where it injures a fellow servant.

Whether a carrier's agent is acting within the line of his employment or not in shooting a person who has used abusive language to him concerning storage charges on baggage is held, in Daniel v. Petersburg R. Co. (N. C.) 4 L.R.A.(N.S.) 485, to be a question for the jury.

Where a master owes to a third person the performance of some duty to do or not to do a particular act, and commits the performance of the duty to a servant, it is held, in Stranahan Bros. Catering Co. v. Coit (Ohio) 4 L.R.A.(N.S.) 506, that the master cannot escape responsibility if the servant fails to perform it, whether such failure is accidental or wilful, or whether it is the result of negligence or malice.

Where the negligence of the master is the proximate cause of an injury to a servant, it is held, in Schwarzschild & S. Co. v. Weeks (Kan.) 4 L.R.A.(N.S.) 515, that the master will be held liable notwithstanding the negligence of the master may have been set in operation by the act of one who otherwise might be held to be a fellow servant.

Municipal corporations. See CONTRACTS; HIGHWAYS.

Negligence. See also EVIDENCE.

A railroad company is held, in Pannill v. Potomac, F. & P. R. Co. (Va.) 4 L.R.A. (N.S.) 80, to owe no duty to children trespassing on its property to keep its turntable in such condition that they cannot be injured by playing on it.

Where persons are gunning together, and an accident occurs through the unexpected discharge of one of the guns, it is held, in Siefker v. Paysee (La.) 4 L.R.A.(N.S.) 119, that the negligence of the person handling the gun must be gross in its nature in order to render him liable for the accident.

That safety gates where a railway crosses a highway are open is held, in Koch v. Southern California R. Co. (Cal.) 4 L.R.A.(N.S.) 521, not to be such an absolute assurance of safety that a traveler on the highway can proceed to cross the tracks without any precaution as to the possible approach of trains.

Nuisance. A corporation organized for the generation of electricity under legislative authority for public service is held, in Townsend v. Norfolk Railway & Light Co. (Va.) 4 L.R.A.(N.S.) 87, not to be acting in its public capacity in locating its power house, so as to be absolved from liability for injuring neighboring property by the smoke, noise, and escaping electricity incident to its business.

Partnership. A statute permitting arrest for fraud is held, in Ledford v. Emerson (N. C.) 4 L.R.A. (N.S.) 130, to apply when, by reason of the character of the transaction, or the general termination of the partnership dealings, an action at law will lie against one partner in favor of the other.

See also CONTRACTS.

Picketing. The right to an injunction to restrain striking employees and the union to which they belong, and which is aiding them, from congregating about the entrance to the place of business of their former employer and endeavoring to persuade his customers to withhold their patronage from him, is sustained in Jensen v. Cooks' & Waiters' Union (Wash.) 4 L.R.A.(N.S.) 302.

Principal and agent. See also ACTION; CONTRACTS.

Railroads. See EVIDENCE; NEGLIGENCE.

Shelley's Case. See WILLS.

Specific performance. See CONTRACTS.

State institutions. A state hospital established to care for insane persons is held, in Leavell v. Western Kentucky Asylum (Ky.) 4 L.R.A.(N.S.) 269, not to be liable for torts committed by a person under its care who is permitted to assist in the work of the institution, notwithstanding the statute provides that it may sue and be sued.

Stock exchange. One who purchases, in the name of his partner, a seat in a stock exchange, is held, in Zell v. Baltimore Stock Exchange (Md.) 4 L.R.A.(N.S.) 435, to have, notwithstanding knowledge on the part of the officers of the exchange of the facts, no equity to prevent the enforcement of a rule of the exchange that a seat may be sold for the debts of the member holding it in favor of other members.

Street railways. A declaration of forfeiture of a street railway privilege in a street by the council of the town, effected by a repeal of the ordinance by which the privilege was granted, pursuant to a reservation of power so to do for cause and after notice, is held, in Wheeling & E. G. R. Co. v. Triadelphia (W. Va.) 4 L.R.A.(N.S.) 321, not to have the force and effect of a judicial determination of the existence of cause for forfeiture, and not to preclude a resort to the courts by the railway company for vindication of its rights.

See also HIGHWAYS.

Telegrams. In the absence of notice of facts or circumstances calculated to arouse suspicion in the mind of a person of ordinary prudence and intelligence, it is held, in Bank of Havelock v. Western U. Teleg. Co. (C. C. A. 8th C.) 4 L.R.A.(N.S.) 181, that the operators of a telegraph company are not required to investigate or ascertain the identity, or authority to send it, of the person who tenders a message for transmission, whether that message is in writing, or is spoken directly to the operator, or is communicated to him by telephone.

Ticket brokers. See CONSTITUTIONAL LAW.

Trade names. To constitute an infringement on a trade name, it is held, in Regent Shoe Mfg. Co. v. Haaker (Neb.) 4 L.R.A. (N.S.) 447, that it is necessary that the two places of business be in actual competition with each other; and, where one is engaged exclusively in the retailing of boots, shoes, and rubbers, and the other in the manufacture and wholesale jobbing of such goods, there is held to be no such competition as will warrant an order restraining the latter, at the suit of the former, although the names of the firms are of similar import, and although the retail firm had legally acquired its trade name before the organization of the wholesale company.

Turntable. See NEGLIGENCE.

Wills. A provision in a will vesting a fund in a trustee with directions to pay the income to testator's son until he attains a certain age, when the fund shall become his absolutely, that, in case the son dies before reaching such age, "it shall go to his heirs,"—is held, in Bennett v. Bennett (Ill.) 4 L.R.A.(N.S.) 470, not to vest the title in the son under the rule in Shelley's Case, so as to defeat the testator's intention, but is to be regarded as one of purchase or substitution.

Writ and process. Service by publication upon a domestic corporation which has failed to provide officers or agents upon whom other service may be had is held, in Clearwater Mercantile Co. v. Roberts, J. & R. Shoe Co. (Fla.) 4 L.R.A.(N.S.) 117, to constitute due process of law.

The servants or agents of the lessee of a railroad are held, in Chicago, B. & Q. R. Co. v. Weber (Ill.) 4 L.R.A.(N.S.) 272, not to be the agents of the lessor for the purpose of receiving service of process in actions for personal injuries.

One who has exclusive supervision and control of some department of the corporation's business, the management of which requires of such person the exercise of independent judgment and discretion, and the exercise of such authority that it may fairly be said that service of summons upon him will result in notice to the corporation, is held, in Federal Betterment Co. v. Reeves (Kan.) 4 L.R.A.(N.S.) 460, to be a managing agent, within the meaning of the statute providing for the service of summons upon a managing agent of a foreign corporation.

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"Lincoln the Lawyer." By Frederick Trevor Hill. (The Century Co., New York.) 1906. 1 vol. $2.00.

Anything new respecting the life of Abraham Lincoln is of surpassing interest. Lincoln's experiences as a lawyer, and their importance in the development of his power to grapple with the stupendous problems of his career as President, have never before been adequately set forth. To all people, but especially to lawyers, this book is of great interest.

"Toxicology." The nature, effects, and detection of poisons, with the diagnosis and treatment of poisoning. By Cassius M. Riley, 3d ed., revised and enlarged. With illustrations. (P. Blakiston's Son & Co., Philadelphia.) 1906. 1 vol. $1.50.

This book was prepared, first for the author's students, and second, as a reference book for physicians. But it is a handy volume, also, for all lawyers who have to deal with questions of poisoning, and such cases are unfortunately numerous.

"The Power to Regulate Corporations and Commerce." By Frank Hendrick. (G. P. Putnam's Sons, New York.) 1906. 1 vol. $4.00.

This attempts to define the limits within which state and Federal governments can secure freedom of trade by control of persons and things engaged therein, and also the respective powers of the departments of government. It deals with the results of more than two thousand cases relating to the subject, and makes an important contribution to a question of exceptional public interest.

Recent Articles in Law Journals and Reviews.

"Where Part of the Consideration of a Contract is Void, Illegal, or Unenforceable."—39 Chicago Legal News, 93.

"Future Interests in Land,"—22 Law Quarterly Review, 383.

"Protected Life Estates: A Suggestion."—22 Law Quarterly Review, 401.

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"Some Recent Attacks on the American

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"The Collection of a Judgment in Illinois."—1 Illinois Law Review, 157.

"Mortmain."—63 Central Law Journal, 240.

"The Divorce Congress and Suggested Improvements in the Statutory Law Relating to Divorce."—39 Chicago Legal News, 56.

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